



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
09/269,845	09/24/99	JANUSZ	M AAT-11612

09/269,845 09/24/99 JANUSZ

M AAT-11612
EXAMINER

HM22/0427

KENNETH A CLARK
RANKIN HILL PORTER & CLARK
925 EUCLID AVENUE
SUITE 700
CLEVELAND OH 44115-1405

ART UNIT DAVENPORT

DATE MAILED: 1653

04/27/00

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on Paul Amendment 3/31/99

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s) or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 3-7, 9-22, 24-36, 38, 40, 41, 44, 46-47, 49-55 are pending in the application.

Of the above, claim(s) _____ are withdrawn from consideration.

☐ Claim(s) _____ are allowed.

☒ Claim(s) 3-7, 9-22, 24-36, 38, 40, 41, 44, 46-47, 49-55 are rejected.

☐ Claim(s) _____ are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of Reference Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

- SEE OFFICE ACTION ON THE FOLLOWING PAGES -

Art Unit: 1653

1.) This application contains sequence disclosures that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 CFR 1.821(a)(1) and (a)(2). However, this application fails to comply with the requirements of 37 CFR 1.821 through 1.825 for the reason(s) set forth on the attached Notice To Comply With Requirements For Patent Applications Containing Nucleotide Sequence And/Or Amino Acid Sequence Disclosures.

Applicant is given THREE MONTHS, whichever is longer, from the mailing date of this letter within which to comply with the sequence rules, 37 CFR 1.821 - 1.825. Failure to comply with these requirements will result in ABANDONMENT of the application under 37 CFR 1.821(g). Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a). In no case may an applicant extend the period for reply beyond the SIX MONTH statutory period. Direct the reply to the undersigned. Applicant is requested to return a copy of the attached Notice to Comply with the reply.

2.) Claims 13-22, 39, 43, 46 and 52 provides for the use of Colostrinin, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 13-22, 39, 43, 46 and 52 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35

Art Unit: 1653

U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

3.) Applicants have not made reference to the prior PCT application in the first line of the specification after the title.

4.) The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5.) Claims 3-7, 9-22, 24-36, 38, 40, 41, 44, 46-47 and 51-55 are rejected under 35

U.S.C. 103(a) as being unpatentable over Inglot et al.

The Inglot reference teaches Colostrine: a proline-rich polypeptide. The reference teaches a chemically synthesized (PRP). The reference teaches compositions, methods of making the compound and composition and uses for the compound. The reference teaches use of the compound for humans in the treatment of chronic viral infection, progressive neurodegenerative and autoimmune diseases. See page 223.

The instant invention is drawn to Colostrinin for use in treatment of chronic disorders of the central nervous system, neurological disorders, mental disorders, neurodegenerative diseases, Alzheimer's disease, Psychosis, neurosis, disorders of the immune system, AIDS, chronic

Art Unit: 1653

bacterial and viral infections, and others. The invention is drawn to non-ovine sources.

Compositions, methods of treatment or use and a nanopeptide.

The difference in the prior art and the instant invention, if there is one, is the specific peptide and dosages set forth.

The prior art disclosures teach the use of the Colostrinin. The scope of the uses taught by the prior art encompass the scope of the instant invention methods of use. The dosages are optimal choice and are well within the level of skill in the art to choose accurate dosages and modes of administration in the absence of a showing of unexpected results. The peptide set forth is a colostrinin peptide and does not distinguish over the prior art of record. It would have been prima facie obvious to one of ordinary skill in the art to use Colostrinin in the treatment of autoimmune, neurodegenerative disease and chronic viral infections as taught by the prior art, one would expect the instant invention compound, composition and methods of use in view of the prior art disclosure in the absence of a showing of unexpected results.

6.) Any inquiry concerning this communication should be directed to Avis Davenport at telephone number (703) 308-4002.

A. Davenport:jmr

April 7, 2000

April 24, 2000

Avis M. Davenport
AVIS M. DAVENPORT
PRIMARY EXAMINER
GROUP 1800/1600

Application No.: 09/269845

**NOTICE TO COMPLY WITH REQUIREMENTS FOR PATENT APPLICATIONS CONTAINING
NUCLEOTIDE SEQUENCE AND/OR AMINO ACID SEQUENCE DISCLOSURES**

The nucleotide and/or amino acid sequence disclosure contained in this application does not comply with the requirements for such a disclosure as set forth in 37 C.F.R. 1.821 - 1.825 for the following reason(s):

- ☒ 1. This application clearly fails to comply with the requirements of 37 C.F.R. 1.821-1.825. Applicant's attention is directed to these regulations, published at 1114 OG 29, May 15, 1990 and at 55 FR 18230, May 1, 1990.
- ☐ 2. This application does not contain, as a separate part of the disclosure on paper copy, a "Sequence Listing" as required by 37 C.F.R. 1.821(c).
- ☐ 3. A copy of the "Sequence Listing" in computer readable form has not been submitted as required by 37 C.F.R. 1.821(e).
- ☐ 4. A copy of the "Sequence Listing" in computer readable form has been submitted. However, the content of the computer readable form does not comply with the requirements of 37 C.F.R. 1.822 and/or 1.823, as indicated on the attached copy of the marked -up "Raw Sequence Listing."
- ☐ 5. The computer readable form that has been filed with this application has been found to be damaged and/or unreadable as indicated on the attached CRF Diskette Problem Report. A Substitute computer readable form must be submitted as required by 37 C.F.R. 1.825(d).
- ☐ 6. The paper copy of the "Sequence Listing" is not the same as the computer readable form of the "Sequence Listing" as required by 37 C.F.R. 1.821(e).
- ☐ 7. Other: _____

Applicant Must Provide:

- ☒ An initial or substitute computer readable form (CRF) copy of the "Sequence Listing".
- ☒ An initial or substitute paper copy of the "Sequence Listing", as well as an amendment directing its entry into the specification.
- ☒ A statement that the content of the paper and computer readable copies are the same and, where applicable, include no new matter, as required by 37 C.F.R. 1.821(e) or 1.821(f) or 1.821(g) or 1.825(b) or 1.825(d).

For questions regarding compliance to these requirements, please contact:

For Rules Interpretation, call (703) 308-4216

For CRF Submission Help, call (703) 308-4212

For PatentIn software help, call (703) 308-6856

PLEASE RETURN A COPY OF THIS NOTICE WITH YOUR RESPONSE